**Before the**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

**In the Matter of**

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| **Re: Delete Delete Delete** | **)** | **GN Docket No. 25-133** |
| | **)** | |
| **Telecommunications Relay Services and** | **)** | |
| **Speech-to-Speech Services for** | **)** | |
| **Individuals with Hearing and Speech** | **)** | |
| **Disabilities** | **)** | **CG Docket No. 03-123** |
| | **)** | |
| **Structure and Practices of the Video** | **)** | |
| **Relay Service Program** | **)** | **CG Docket No. 10-51** |
| | **)** | |
| **Wireline Competition Bureau Releases** | **)** | |
| **The Telecommunications Reporting** | **)** | |
| **Worksheets and Accompanying** | **)** | |
| **Instructions** | **)** | **WC Docket No. 06-122** |

**COMMENTS OF IDT TELECOM, INC.**

## I. BY COMPELLING THE REIMBURSEMENT OF RELAY SERVICES FROM THE INTERNATIONAL JURISDICTION, THE COMMISSION VIOLATES THE COMMUNICATIONS ACT OF 1934, AS AMENDED, AND THE ADMINISTRATIVE PROCEDURE ACT

The FCC does not have the authority to administer the provision of international relay services or compel the recovery of any relay service costs from the international revenue reported by telecommunications and interconnected VOIP service providers. 47 U.S.C. § 225, which directed the Commission to establish rules for a nationwide relay service, refers to "intrastate" and "interstate" relay services and does not mention international relay services (or, by extension,

recovery of relay services from international revenue.) To be clear, the word "international" does not appear in the statute. Yet, when initially establishing the contribution methodology to support the Federal Telecommunications Relay Service Fund, the Commission wrote "For the purpose of calculating TRS contributions, interstate telecommunications service includes … international."[1] This interpretation of Congressional intent, memorialized in 47 C.F.R.§64.604(c)(5)(iii)(A) is, quite simply, unsupportable as a matter of law and remains subject to challenge before the Commission in two separate proceedings.[2] The Commission's decision appears to rest on its (mistaken) conclusion that Congress authorized the Commission to make available international relay services (and, by extension, authorized the compensation of such services from the corresponding jurisdiction) or that international services are a subset of interstate services.

47 U.S.C. § 225(B)(2) states that the "the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this subchapter with respect to any common carrier engaged in interstate communication." This, and other statutory language, clarifies that the Commission's authority over intrastate relay service mirrors its authority over interstate relay services. By this language, Congress explicitly did not include the international jurisdiction within the Commission's authority. In fact, Congress explicitly excluded the international jurisdiction by stating that "The term 'common carrier' or 'carrier' includes any

[1] *In re Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, MM Docket No. 90-571, 8 FCC Rcd. 5300, 5302 (1993)("TRS III").
[2] "Telco Group Application for Review," *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* CG 03-123, at pp 5-7 (June 4, 2009)("Telco Group Application for Review"). *See also,* Telco Group Declaratory Ruling on Reconsideration at FN 21. Globecomm Systems filed a Petition for Declaratory Ruling that there is no obligation to pay into the Interstate TRS Fund based on revenues arising from traffic that does not originate or terminate in the United States. The Bureau stated that it would "address GSI's petition in a separate order." That neither the Bureau nor the Commission can, decades later, deign to address significant issues involving billions of dollars indicates the gross negligence and indifference of the Commission.

common carrier engaged in *interstate communication* by wire or radio as defined in section 153[.]" (Emphasis added) Notably, "interstate communication" is defined in 47 U.S.C. § 153(28) as follows:

> **(28) Interstate communication**
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> The term "interstate communication" or "interstate transmission" means communication or transmission
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> **(A)** from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia,
>
> **(B)** from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or
>
> **(C)** between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

This definition does not include "Foreign Communication," i.e., "transmission from or to any place in the United States to or from a foreign country."[3] Congress could very easily have included international or foreign relay services as being available[4] and subject to cost recovery,[5] but Congress did not do so. However much the Commission believes Congress *intended* to extend relay services to the international jurisdiction and however much the Commission believes Congress *should* have extended relay services to the international jurisdiction is immaterial: the

[3] 47 U.S.C. § 153(21).

[4] For example, Congress could have stated in 47 U.S.C. §225(b)(1) "the Commission shall ensure that interstate, intrastate and international [or foreign] telecommunications relay services are available" but the Commission did not do so: it explicitly did not include international or foreign telecommunications relay services.

[5] Likewise, Congress could have stated in 47 U.S.C. §225(d)(3)(b) "Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction and costs caused by international [or foreign] telecommunications relay services shall be recovered from the international [or foreign] jurisdiction" but the Commission did not do so: it explicitly did not include international or foreign telecommunications relay services.

plain language of the statute demonstrates that Congress did not apply the provisions of 47 U.S.C. § 225 to international (or foreign) communications, the providers of such communications and/or the revenue generated from the provision of such communications.

Even if the Commission asserts jurisdiction over international relay services, IDT opposes the existing contribution methodology, which secures the funding of domestic relay services (in part) from the international jurisdiction in violation of 47 U.S.C. § 225(d)(3)(B) as implemented under 47 CFR §64.604(c)(5)(ii). If the Commission is going to read Section 225 as authorizing the provision of international relay services and compensation for relay services from the international jurisdiction, it can and must read Section 225 to extend the jurisdictional separations requirement to international revenue, thus requiring the recovery of costs incurred from the provision of international relay services from the international jurisdiction while prohibiting the international jurisdiction from being tapped to recover costs from the domestic jurisdictions. As the Commission has cited, "[A]mbiguities in statutes within an agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in a reasonable fashion."[6] So, to the degree the failure to explicitly reference international relay services within Section 225 is "ambiguous," the ambiguity can be resolved reasonably, *i.e.*, by concluding that if Congress intended to allow for relay service users to make international calls Congress also intended to apply the jurisdictional separations mandate to the recovery of international relay services as well. If the Commission fails to extend the interpretation of Section 225 to jurisdictional separations, the resolution of the ambiguity is unreasonable, as it leads to inconsistent, contrary outcomes within the same statute.

[6] Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 980 (2005).

As noted repeatedly in this filing and long acknowledged by the Commission, the intent of Congress was unambiguous on the issue of jurisdictional separations: relay service costs are to be recovered from the corresponding jurisdiction. Thus, the only question can be whether Congress intended to impose a different recovery mechanism for the international jurisdiction. The answer is, quite simply, that there is no evidence to indicate this to be the case.

Additionally, it is unreasonable to conclude that international relay services are jurisdictionally the same as interstate relay services and are meant to be recovered from a joint interstate/international revenue base, which is presently the case. International calls are not a subset of interstate calls[7]: international calls are jurisdictionally different from intrastate or interstate. International calls originate in a state, territory or possession of the United States (the "US") and terminate outside the US (or vice versa) whereas interstate calls originate in one state, territory or possession and terminate within another. The Commission has acknowledged that international calls are separate and apart from interstate calls ("[W]e agree … that by definition … international telecommunications are not 'interstate' because they are not carried between states, territories or possessions of the United States"[8] and "international services are supported by the Interstate TRS Fund.")[9] Moreover, the revenue generated from international calls is reported separately from intrastate and interstate revenue on the Form 499-A[10] and is treated differently as

[7] This appears to be what the Commission assumed when it noted that "[T]hese commenters propose that the Commission require TRS Fund contributions from providers of every interstate service including…international." TRS III at ¶9.
[8] *In re: Federal-State Joint Board Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 22493 at ¶779 (May 8, 1997).
[9] *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* CG 03-123, Declaratory Ruling and Reconsideration, DA 06-1100 at ¶ 10 (May 25, 2006) ("Telco Group Declaratory Ruling").
[10] "Columns (b), (c), (d), and (e) are provided to identify the part of gross revenues that arise from interstate and international services for each entry on Lines 303 through 314 and Lines 403 through 417," 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at 26.

well.[11] The Commission has even explicitly addressed the provision of and recovery for certain international relay services by prohibiting the compensation for certain internationally-originated VRS calls[12] and international IP Relay calls in their entirety.[13] In sum, international relay service calls are a specific jurisdiction – neither intrastate nor interstate - and any attempt to treat the international jurisdiction as anything less than its own separate jurisdiction for the purpose of complying with the jurisdictional separations requirement must fail.

## II. THE RECOVERY OF INTRASTATE AND INTERSTATE RELAY SERVICE CHARGES FROM THE REVENUE OF INTERNATIONAL SERVICE PROVIDERS IS CONTRARY TO NUMEROUS PROVISIONS OF THE PRESIDENTIAL ACTION ENTITLED "ENSURING LAWFUL GOVERNANCE AND IMPLEMENTING THE PRESIDENT'S 'DEPARTMENT OF GOVERNMENT EFFICIENCY' DEREGULATORY INITIATIVE," ISSUED FEBRUARY 19, 2025

Section 2(a)(i) of the DEREGULATORY INITIATIVE seeks to identify "unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution." We allege that when the Commission wrote "For the purpose of calculating TRS contributions, interstate telecommunications service includes … international,"[14] it exceeded its mandate under 47 U.S.C. § 225(b)(1) to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and

[11] *See*, 2015 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A) at Appendix A.
[12] 47 C.F.R. § 64.604(a)(7).
[13] Even in 2005, when IP Relay represented 76% of recoverable relay minutes for the entire TRS Fund, none of these minutes were international because the FCC, as a matter of policy, did not compensate international IP Relay calls.
[14] *In re Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Third Report and Order, MM Docket No. 90-571, 8 FCC Rcd. 5300, 5302 (1993)("TRS III"). It is particularly noteworthy that international telecommunications service provider revenue was included in the TRS Fund contribution base at the suggestion of one commenter (Sprint) on the anticipation that international TRS service would be made available. Yet the FCC has adopted rules restricting the types of calls eligible for TRS Fund compensation, including certain international calls. Specifically, VRS calls from an international IP address are not compensable unless a U.S. resident is traveling abroad and takes steps to pre-register with his or her default provider and make calls only from certain verifiable locations. The TRS Fund also does not compensate providers for International IP relay calls.

speech-impaired individuals in the United States[.]" because that mandate did not include the provision of international relay services nor did it include imposing a surcharge upon international telecommunications service provider revenue. Had Congress intended to make available to the public international relay services and if Congress intended to recover those costs from international telecommunications service revenue, it could have done so. But it did not. Instead, the FCC chose to do so, effectively becoming its own legislator. This violation of the Separation of Powers goes to the heart of President Trump's EGULATORY INITIATIVE and must be struck down immediately.

Section 2(a)(ii) of the DEREGULATORY INITIATIVE seeks to identify "regulations that are based on unlawful delegations of legislative power." The FCC's above-discussed actions apply to this Section as well, although it is arguable that the Commission took the legislative power as much as it was delegated to them. Regardless, the Commission chose to act as the Legislator to create a law (that international regulatory services must be made available to the public and compensable by international telecommunications service providers) rather than its more limited role as an Executive agency using its expertise to implement a statute at the direction of the Legislative branch.

Section 2(a)(iii) of the DEREGULATORY INITIATIVE seeks to identify "regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition." Under this "best reading" the Commission's action still fails. Under this "best reading," one might argue that because international telecommunications services were available at the time, and the Americans With Disabilities Act (of which Section 225 is one part) intended to remove the barriers limiting the lives of disabled people, that Congress intended for all jurisdictions of telecommunications service – including international – to be available. Yet even

a simple reading of Section 225 does not allow for such an expansive interpretation. Section 225(b)(1) states:

> In order to carry out the purposes established under section 151 of this title, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

Thus, Congress saw this as an opportunity to develop the "Nation's" telephone system – not the system of foreign countries. One must keep in mind that in 1993, the only way for international relay service to work would require an operator to speak the foreign language of the called party. Thus, the operator would need to be fluent in English (to understand the US calling party) as well as German or Russian or Swahili or whatever would be the language of the foreign-located called party. This is a *massive* undertaking and there is simply nothing in the legislative or FCC history which indicates that such a massive undertaking was intended.[15] Thus, even the most generous reading of Section 225 does not allow one to conclude that the FCC acted in accordance with the expressed written consent of Congress.

Section 2(a)(iv) of the DEREGULATORY INITIATIVE seeks to identify "regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority." We assert that those matters are found here. IDT has long argued with the Commission that Section 225(d)(3) directed the Commission to determine costs of relay services and the recovery of those costs on a jurisdictional basis:

> **(3) Jurisdictional separation of costs**
>
> **(A) In general**

[15] Indeed, some 42 years later, the availability of TRS for Americans (or U.S.-located callers) using TRS who do not speak English, Spanish or ASL is greatly limited.

Consistent with the provisions of section 410 of this title, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

**(B) Recovering costs**

Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of section.

While the Commission has taken steps to reduce the inherent unfairness of its TRS Fund contribution methodology by extending the contribution to IP-based relay service costs to include intrastate telecommunications service provider revenue, IDT asserts that the Commission's methodology falls short of its statutory obligations by including international telecommunications service provider revenue within the TRS Fund contribution base. As noted above in our comments and in the above-quoted language from Section 225(d)(3), if Congress intended for international relay services to be available and recoverable, the "Recovering costs" section would most certainly read "…costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction **and costs caused by international telecommunications relay services shall be recovered from all subscribers for every international service**." Yet this last (highlighted) phrase does not exist in the statute. Nevertheless, because the Commission insists on its authority to impose surcharges on international revenue for the provision of intra- and interstate TRS services, IDT has been forced to remit 10s of millions of dollars to the Federal TRS Fund solely upon the basis

of its international revenue. This amount is significant to IDT and, as noted above, there is no legislative basis for the Commission to impose the surcharge.

Section 2(a)(v) of the DEREGULATORY INITIATIVE seeks to identify "regulations that impose significant costs upon private parties that are not outweighed by public benefits." IDT asserts that the Commission's actions violate this principle as well. As noted above, IDT has contributed well over tens of millions of to the Federal TRS Fund based *solely* on its international revenue. We consider this to be a "significant cost." And we do not consider this cost to IDT as outweighed by the Public for the simple fact that these costs, over time, could have been recovered by providers of interstate and intrastate services. The benefit of relay services would not be harmed or limited in any way had their costs been recovered from the appropriate, lawful intrastate and interstate telecommunications service providers.

Accordingly, the directions set forth on FCC Form 499-A lines 511 - 514 and corresponding instructions to report international revenue for the purpose of determining carriers' contribution to the Federal TRS Fund must be struck and all future budgets for the Federal TRS Fund must not include international revenue in the contribution base.

In conclusion, IDT would like to take a moment to express its appreciation for the Commission allowing regulated entities the opportunity to raise issues of concern that might not otherwise have had a chance to be raised. In this filing, IDT has raised the concern that, in 1993, the Commission exceeded the authority granted to it by Congress when it chose to make available international relay services and to also make international telecommunications service providers subject to the contribution to the Federal TRS Fund. This decision, and the many subsequent decisions built upon this mistaken promise, have led to unimaginable harm to all international telecommunications service providers, including IDT. Now that President Trump

has demanded that regulatory agencies review and correct past instances in which agencies have exceeded their authority, the time has come for the Commission to correct this grievous error and declare that international relay service calls are not compensable from the Interstate TRS Fund and that international revenue is not subject to contribution to the Interstate TRS Fund. This would be implemented via the annual Interstate TRS Fund Payment Formula and Fund Size proceeding (CG 03-123) and expressed via changes to the FCC Form 499-A and its instructions, corresponding to revisions made by the Commission.

Respectfully submitted,

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